

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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UNITED STATES OF AMERICA,

No. 0:20-CR-49-NEB-KMM

Plaintiff,

ORDER

v.

GARY ROBERT DRAKE,

Defendant.

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This matter is before the Court on the parties' non-dispositive motions for discovery, disclosure, and other similar relief. The Court held a hearing on the motions on September 1, 2020, at which the government and Mr. Drake were represented by counsel. Based on the parties' submissions and the argument at the hearing, the Court enters the following Order.

**1. Government Motion for Discovery Pursuant to Federal Rules of  
Criminal Procedure 16(b), 12.1, 12.2, 12.3 and 26.2 (ECF No. 14).**

Pursuant to several Rules of Criminal Procedure, the government seeks discovery and disclosure from Mr. Drake. The government seeks discovery regarding documents and tangible objects; reports of examinations and tests; expert testimony; any alibi defense; any insanity defense or defense based on mental illness; any claim of public authority; and witness statements. The government's motion is **GRANTED** to the extent that Mr. Drake shall provide discovery as required by the applicable Rules of Criminal Procedure.

With respect to expert disclosures, the government shall make any expert disclosures at least **four weeks prior to trial**. Mr. Drake shall make any expert disclosures at least **three weeks prior to trial**.

**2. Mr. Drake's Motion for Discovery of Expert Under Rule 16(a)(1)(G) (ECF No. 27).**

Mr. Drake seeks discovery of and disclosure of any expert evidence the government intends to use at trial. Mr. Drake's motion is **GRANTED**. Expert disclosures shall be made in compliance with Paragraph 1 of this Order.

**3. Mr. Drake's Motion to Preserve Rough Notes (ECF No. 28).**

Mr. Drake seeks an order requiring all government law enforcement officers and agents involved in the investigation of this case to retain and preserve any rough notes taken during their investigation. Mr. Drake's motion is **GRANTED** to the extent that it seeks to compel the government to retain any rough notes. Disclosure is not required by this Order.

**4. Mr. Drake's Motion to produce 404(b) Evidence (ECF No. 29).**

Mr. Drake moves the Court for an Order directing the government to disclose any "bad act" or "similar course of conduct" evidence it intends to offer at trial through Federal Rule of Evidence 404(b). The government does not object to making disclosure as required by Rule 404(b). Mr. Drake's motion is **GRANTED**. The government shall make the disclosures required by Federal Rule of Evidence 404(b) at least **three weeks prior to trial**.

**5. Mr. Drake's Motion for Attorney-Conducted Voir Dire (ECF No. 30).**

Mr. Drake seeks an order permitting counsel to conduct voir dire. The motion is **DENIED WITHOUT PREJUDICE**. How voir dire will be conducted is a matter left to the trial judge's discretion. Mr. Drake may renew his request at a time consistent with the District Court's pretrial order.

**6. Mr. Drake's Motion for Early Disclosure of Jencks Act Materials (ECF No. 31).**

Mr. Drake seeks early disclosure of information covered by the Jencks Act, 18 U.S.C. § 3500. The Jencks Act provides that “[i]n any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.” 18 U.S.C. § 3500(a). Because the Jencks Act does not allow for early discovery of statements, Mr. Drake's motion is **DENIED**. However, nothing in this Order prevents the government from disclosing witness statements prior to the testimony given at trial. The government has represented that it will disclose witness statements at least three days prior to trial to avoid any unnecessary delays. The Court encourages earlier disclosure by the government to avoid unnecessary delays and to ensure the fairness of the proceeding.

**7. Mr. Drake's *Giglio* Motion (ECF No. 32).**

Mr. Drake moves for disclosure of evidence in the government's possession that is favorable to the defense pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Giglio*, 405 U.S. 150 (1972), and their progeny. The government does not oppose the motions, states that it is aware of its obligations under the relevant case law, and represents that it will make any disclosures required. Mr. Drake's motion is **GRANTED**.

**IT IS SO ORDERED.**

Date: September 14, 2020

*s/Katherine Menendez*  
Katherine Menendez  
United States Magistrate Judge